IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 2ND JANUARY 2007 / 12 POUSHA 1928

WP(C).No. 84 of 2007(I)

AGAINST THE ORDER IN MC.22/06 IN
CC.1139/2001 of J.M.F.C.-I,KOCHI

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PETITIONERS:
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1. BASHEER, S/O. MOIDEEN,
   MEDAPPARAMBIL HOUSE, PALLIPURAM VILLAGE,
   KOCHI.

2. APPUKUTTAN, S/O.KRISHNAN,
   PUTHUVELIL HOUSE, PALLIPURAM DESOM,
   PALLILPURAM VILLAGE, KOCHI.

BY ADV. SRI.ABRAHAM JOHN

RESPONDENTS:
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1. DEPUTY TAHSILDAR (R.R.)
   COCHIN-1.

2. STATE OF KERALA BY GOVT.PLEADER
   AND PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

W.P.C.No.84 of 2007

Dated this the 2nd day of January 2007

JUDGMENT

The petitioner is aggrieved by Ext.P1 order passed by the learned Magistrate under Section 446 Cr.P.C. If he is aggrieved by that order, the Code of Criminal Procedure grants him a right of appeal. He ought to have preferred an appeal under Section 449 Cr.P.C. Instead or resorting to that regular course, the petitioner has come to this court with this petition filed under Article 226 of the Constitution. Why is the petitioner not resorting to the legal remedy available to him under the code? When such an efficacious remedy is available, why has the petitioner come to this court? I find no worthwhile reasons for that. The mere fact that interpretation of an earlier order passed by this court arises, is no reason to short circuit the due procedure prescribed under this code and to run to this court with this petition under Section 482 Cr.P.C.

2. This writ petition is in these circumstances dismissed. But I make it clear that the dismissal of this writ petition will not in any way fetter the rights of the petitioner to challenge Ext.P1 order in appropriate proceedings under Section 449 Cr.P.C.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006